

IP 03-0065-CR 1 H/F USA v Bradley
Judge David F. Hamilton

Signed on 04/04/08

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:03-CR-65-1-H/F
)	
MARK A. BRADLEY,)	
)	
Defendant.)	

ENTRY ON MOTION FOR REDUCED SENTENCE

In 2003, the court sentenced defendant Mark A. Bradley to 97 months imprisonment after he pleaded guilty to possessing more than 50 grams of crack cocaine and more than 500 grams of powder cocaine with intent to distribute them. The original sentence reflected a downward departure equivalent to two offense levels under the Sentencing Guidelines based on the defendant's substantial assistance to the government. The government's motion for that downward departure also removed the 120 month mandatory minimum sentence that otherwise would have applied under 21 U.S.C. § 841(b)(1)(A)(iii). On November 1, 2007, the court reduced Bradley's sentence to 87 months pursuant to an agreed motion under Rule 35(b)(2) of the Federal Rules of Criminal Procedure.

Bradley has now filed a motion for a further reduction of his sentence based on 18 U.S.C. § 3582(c) and Amendments 706 and 711 to the Sentencing Guidelines, which retroactively reduced the base offense levels for crack cocaine offenses. As explained below, the court grants the motion and reduces Bradley's sentence to 70 months, which is the bottom of the guideline range two levels below his current sentence of 87 months.

The government opposes the motion on several grounds. First, the government argues that Bradley's guideline range at the time of sentencing actually had a minimum of 120 months, which was the statutory mandatory minimum sentence (absent a motion under 18 U.S.C. § 3553(e) based on substantial assistance). Since Amendments 706 and 711 could not reduce the statutory mandatory minimum as the bottom of the guideline range, argues the government, section 3582(c)(2) cannot apply.

This argument seeks to nullify the effect of the government's motion under section 3553(e) and U.S.S.G. § 5K1.1 for a below-guideline sentence. The government's motion eliminated the mandatory minimum sentence, and the court then sentenced Bradley at the bottom of the applicable guideline range two levels below the original range. The Rule 35(b) motion took Bradley's sentence one level lower.

The Sentencing Guidelines address this situation in the Application Notes for U.S.S.G. § 1B1.10. In the italicized sentence below, Note 3 specifically addresses retroactive guideline amendments when the original sentence was a downward departure, as it was in this case:

Under subsection (b), the amended guideline range and the term of imprisonment already served by the defendant limit the extent to which an eligible defendant's sentence may be reduced under 18 U.S.C. § 3582(c)(2). *When the original sentence represented a downward departure, a comparable reduction below the amended guideline range may be appropriate*; however, in no case shall the term of imprisonment be reduced below time served. Subject to these limitations, the sentencing court has the discretion to determine whether, and to what extent, to reduce a term of imprisonment under this section.

Bradley's original guideline range was 121 months to 151 months (offense level 31, criminal history category II). Under the 2007 amendments, the amended guideline range became 120 months to 121 months (offense level 29, criminal history category II, with the statutory mandatory minimum of 120 months as the bottom of the range). When the government filed its motion under section 3553(e) and section 5K1.1, the statutory mandatory minimum became a nullity in Bradley's case, and the court was able to sentence Bradley a total of three levels below the original guideline range (two levels in the original downward departure plus a third level on the later Rule 35 motion). A sentence three levels below the amended guideline range would be a "comparable reduction" under section 3582(c)(2) and Application Note 3. The range three levels below is 70 to 87 months (offense level 26, criminal history category II), with no mandatory minimum.

The government also argues that this analysis puts Bradley in a better position than he would have been in if the 2007 crack amendments had been in place at the time of the original sentencing. The court disagrees. This analysis puts Bradley in exactly the same position with respect to the Guidelines that he would have been in under the 2007 amendments. Because of the government's motion, the mandatory minimum does not apply. The court is reducing his sentence to the same net sentence (bottom of the range at offense level 26, criminal history category II) that would have applied if the 2007 amendments had been in effect in 2003 and everything else had remained the same, including the two-level departure under section 5K1.1 and the one additional level reduction under Rule 35 in November 2007. His base offense level is reduced by two levels, consistent with the 2007 amendments, and he receives a sentence three levels below that range.

The court also finds that a sentence of 70 months is sufficient but not greater than needed to serve the purposes of sentencing under 18 U.S.C. § 3553(a)(2). The defendant has come forward with evidence of good progress toward rehabilitation in prison. He has earned an associate's degree in college. He has worked as a tutor for other inmates preparing for the GED examination. He has participated in Narcotics Anonymous, has completed a 40-hour non-residential drug treatment program, and has been accepted for the residential program. He has also completed numerous other continuing education courses.

Bradley had a fairly limited criminal history that was considered adequately in the original sentence. He does not have a record of violence, apart from a fight or two when he attended college in Alabama and worked as a bouncer at a bar. He made an early and helpful decision to assist the government, and he has followed through on those commitments, as reflected by the original downward departure motion and the later Rule 35 reduction. An extra seventeen months in prison (the difference between the current sentence of 87 months and the reduced sentence of 70 months) seems unlikely to improve further Bradley's prospects for rehabilitation. And even the 70 month sentence is sufficient to serve the deterrent and retributive purposes of sentencing. Defendant's motion is granted, and his sentence is hereby reduced to 70 months.

So ordered.

Date: April 4, 2008

DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

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